



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 100, 110, 147, and 165

[Docket No. USCG-2018-1049]

Navigation and Navigable Waters; Technical, Organizational, and Conforming Amendments

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: This final rule makes non-substantive technical and conforming amendments to existing Coast Guard regulations. The Coast Guard is issuing this technical amendment to conform to the changes made by the Frank LoBiondo Coast Guard Authorization Act of 2018, which redesignated existing United States Code provisions into new Titles and sections. This technical amendment updates the statutory authority citations for Coast Guard regulations that establish safety zones, security zones, special local regulations, regulated navigation areas, and anchorages. This rule will have no substantive effect on the regulated public.

DATES: This final rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket number USCG-2018-1049, which is available at <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: For information about this document

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SUPPLEMENTARY INFORMATION:

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I. Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
OMB	Office of Management and Budget
§	Section
U.S.C.	United States Code

II. Discussion of the Rule

On December 4, 2018, Congress enacted the Frank LoBiondo Coast Guard Authorization Act of 2018 (Public Law No. 115-282). The Frank LoBiondo Coast Guard Authorization Act of 2018 redesignated multiple provisions within Titles 14, 33, 46, and

50 of the United States Code in an effort reorganize these Titles. The Coast Guard often uses the affected statutory provisions as authority for issuing regulations related to maritime safety and security.

Most significantly, the Frank LoBiondo Coast Guard Authorization Act of 2018 redesignated the Ports and Waterways Safety Act provisions previously located in 33 U.S.C. 1221 through 1236, and with an exception not relevant to this rule, moved those provisions without substantive change into Chapter 700 of Title 46 of the United States Code.¹ The new Chapter 700 of Title 46 is titled “Ports and Waterways Safety”. This rule replaces the old statutory authority citations with their correct statutory authorities.

The Coast Guard periodically issues technical, organizational, and conforming amendments to existing regulations in title 33 of the CFR. These “technical amendments” provide the public with more accurate and current regulatory information, but do not change the effect on the public of any Coast Guard regulations.

This rule updates the authority citations for the following parts of title 33 of the CFR: 100, 110, 147, and 165. This rule also updates in text citations to statutory authorities that were moved by the Frank LoBiondo Coast Guard Authorization Act. The Coast Guard is updating only these CFR parts with this final rule because we frequently issue temporary regulations to protect marine events that rely on the statutory authorities previously located in 33 U.S.C. 1221 through 1236 and 50 U.S.C. 191. These safety-oriented regulations include safety zones, security zones, regulated navigation areas, special local regulations, safety zones on the outer continental shelf, and anchorage grounds. The Coast Guard will update all of our other affected regulations and their

¹ The Act moved 33 U.S.C. 1223a, which governs the use of electronic charts, to 46 U.S.C. 3105.

authority citations in one or more future rulemakings.

III. Regulatory History

We did not publish a notice of proposed rulemaking for this rule. Under Title 5 of the United States Code (U.S.C.), Section 553(b)(A), the Coast Guard finds that this final rule is exempt from notice and public comment rulemaking requirements because these changes involve rules of agency organization, procedure, or practice. In addition, the Coast Guard finds that notice and comment procedures are unnecessary for this final rule under 5 U.S.C. 553(b)(B), as this rule consists of only technical and editorial corrections and these changes will have no substantive effect on the public. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that, for the same reasons, good cause exists for making this final rule effective upon publication in the **Federal Register**.

IV. Basis and Purpose

This final rule makes technical and editorial corrections in parts 100, 110, 147, and 165 of title 33 of the CFR. These changes are necessary to update the authority citations for existing regulations and make other non-substantive amendments that improve the clarity of the CFR. This rule does not create or change any substantive requirements.

This final rule is issued under the authority of 5 U.S.C. 552(a) and 553; 14 U.S.C. 102 and 503; and Department of Homeland Security Delegation No. 0170.1.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on these statutes or Executive orders.

A. *Regulatory Planning and Review*

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs) directs agencies to reduce regulation and control regulatory costs and provides that “for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.”

The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed it. Because this rule is not a significant regulatory action, this rule is exempt from the requirements of Executive Order 13771. *See* the OMB Memorandum titled “Guidance Implementing Executive Order 13771, titled ‘Reducing Regulation and Controlling Regulatory Costs’” (April 5, 2017). This rule involves non-substantive changes and internal agency practices and procedures; it will not impose any additional costs on the public or the government. The qualitative benefit of the non-substantive changes is increased clarity of regulations and their authority. The increased clarity of the CFR is created by the correction of errors, removing outdated references, and correcting

citations to match current statutory text.

B. Small Entities

Under the Regulatory Flexibility Act, 5 U.S.C. 601-612, we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

This rule is not preceded by a notice of proposed rulemaking. Therefore, it is exempt from the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The Regulatory Flexibility Act does not apply when notice and comment rulemaking is not required.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104-121, we offer to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

D. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501-3520. This final rule will not change any of the burdens in the collections currently approved by OMB.

E. Federalism

A rule has implications for federalism under Executive Order 13132 (Federalism) if it has a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under Executive Order 13132 and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

F. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531-1538, requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Although this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

G. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630 (Governmental Actions and Interference with Constitutionally Protected Property Rights).

H. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988 (Civil Justice Reform) to minimize litigation, eliminate ambiguity, and reduce burden.

I. Protection of Children

We have analyzed this rule under Executive Order 13045 (Protection of Children from Environmental Health Risks and Safety Risks). This rule is not an economically significant rule and will not create an environmental risk to health or risk to safety that might disproportionately affect children.

J. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

K. Energy Effects

We have analyzed this rule under Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use). We have determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

L. Technical Standards

The National Technology Transfer and Advancement Act, codified as a note to 15 U.S.C. 272, directs agencies to use voluntary consensus standards in their regulatory

activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

M. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have concluded that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A final Record of Environmental Consideration supporting this determination is available in the docket where indicated in the **ADDRESSES** section of this preamble. This final rule involves non-substantive technical, organizational, and conforming amendments to existing Coast Guard regulations. Therefore, this rule is categorically excluded under paragraph L54 of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01. Paragraph L54 pertains to regulations which are editorial or procedural.

List of Subjects

33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements,
Waterways.

33 CFR Part 110

Anchorage grounds.

33 CFR Part 147

Continental shelf, Marine safety, Navigation (water).

33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements,
Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR parts
100, 110, 147, and 165 as follows:

Title 33—Navigation and Navigable Waters

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 is revised to read as follows:

Authority: 46 U.S.C. 70041; 33 CFR 1.05-1.

§ 100.35 [Amended]

2. In § 100.35(c), remove the text “33 U.S.C. 1233” and add in its place the text
“46 U.S.C. 70041”.

§ 100.1401 [Amended]

3. In § 100.1401(e), remove the text “33 U.S.C. 1233” and add in its place the
text “46 U.S.C. 70041”.

PART 110—ANCHORAGE REGULATIONS

4. The authority citation for part 110 is revised to read as follows:

Authority: 33 U.S.C. 471, 2071, 46 U.S.C. 70034; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

5. In § 110.1a, revise the section heading and paragraph (a) introductory text to read as follows:

§110.1a Anchorages under Ports and Waterways Safety provisions.

(a) The anchorages listed in this section are regulated under 46 U.S.C. Chapter 700, “Ports and Waterways Safety”:

* * * * *

PART 147—SAFETY ZONES

6. The authority citation for part 147 is revised to read as follows:

Authority: 14 U.S.C. 544; 43 U.S.C. 1333; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 0170.1.

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

7. The authority citation for part 165 is revised to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

8. In part 165:

- a. Revise all references to “33 U.S.C. 1226” to read “46 U.S.C. 70116”.
- b. Revise all references to “33 U.S.C. 1231” to read “46 U.S.C. 70034”.
- c. Revise all references to “33 U.S.C. 1232” to read “46 U.S.C. 70036”.
- d. Revise all references to “50 U.S.C. 191” to read “46 U.S.C. 70051”.
- e. Revise all references to “50 U.S.C. 192” to read “46 U.S.C. 70052”.

§ 165.9 [Amended]

9. Amend § 165.9 as follows:

- a. In paragraph (b), remove the text “the Ports and Waterways Safety Act, 33 U.S.C. 1221-1232” and add in its place the text “46 U.S.C. 70001-70041”.
- b. In paragraph (c):
 - i. Remove the text “the Ports and Waterways Safety Act, 33 U.S.C. 1221-1232” and add in its place the text “46 U.S.C. Chapter 700”; and
 - ii. Remove the text “50 U.S.C. 191-195” and add in its place the text “46 U.S.C. 70051-54”.

§ 165.838 [Amended]

10. Amend § 165.838 as follows:

- a. In paragraph (b)(5), remove the text “the Ports and Waterways Safety Act, 33 U.S.C. 1221 et seq.” and add in its place the text “46 U.S.C. Chapter 700”.
- b. In paragraph (i), remove the text “the Ports and Waterways Safety Act, 33 U.S.C. 1221 et seq.” and add in its place the text “46 U.S.C. 70036 and 70041”.

Dated: February 27, 2019.

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U.S. Coast Guard.
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